

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

* * * * * 19CR10080-NMG
UNITED STATES OF AMERICA *
VS. * SEPTEMBER 18, 2019
* 2:23 P.M.
ROBERT ZANGRILLO *
* * * * * BOSTON, MA

BEFORE THE HONORABLE M. PAGE KELLEY
MAGISTRATE JUDGE
(Motion Hearing)

APPEARANCES:

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1 18 SEPTEMBER 2019 -- 2:23 P.M.

2 THE CLERK: Today is Wednesday, September 18th,
3 2019, and we are on the record in Criminal Case
4 No. 19-10080, the United States v. Robert Zangrillo,
5 the Honorable M. Page Kelley presiding.

6 Will counsel please identify themselves for
7 record.

8 MR. FUCHS: Yes. Good afternoon, Your Honor.

9 Doug Fuchs from Gibson, Dunn & Crutcher on
10 behalf of third party University of Southern
11 California. And with me at counsel table is
12 Anthony Fuller who I'm sure you know well.

13 THE COURT: Yes. Good afternoon.

14 MR. WEINBERG: Good afternoon, Your Honor.
15 Martin Weinberg with Michael Pabian who filed a notice
16 of appearance today as my co-counsel on behalf of
17 Defendant, Robert Zangrillo.

18 THE COURT: Okay. And good afternoon to you.

19 We're starting a few minutes early, but I was
20 just standing out there and you're just sitting in
21 here, so I thought we might as well get going.

22 So I did ask the Government to join us because I
23 noticed in the pleadings there are some representations
24 about the Government's position on certain matters, and
25 I didn't know if we might want them to chime in or not.

1 So that's why they're sitting there.

2 So we're here for oral argument on No. 532 on
3 the docket, which is USC's motion to quash Defendant
4 Zangrillo's subpoena. And this matter has its origins
5 in No. 432, which was Defendant Zangrillo's motion for
6 a Rule 17(c) subpoena. That was filed under seal, but
7 I think it was subsequently unsealed, at least some --
8 I think it's still redacted, parts of it, on the
9 docket in which Defendant set out parts of his defense,
10 but that should be on the docket now. So I allowed
11 that motion, and USC moved to quash, and then the
12 parties have filed several responsive and opposing
13 pleadings since that time.

14 And one thing I want to make clear before I hear
15 argument is that I allowed the Defendant's motion for a
16 subpoena, but I did so with the understanding that USC
17 would have the opportunity to confer with Mr. Weinberg
18 and to file a motion to quash if they were not able to
19 reach an agreement, and both of those things were
20 obviously done. So that's why we're here. But I don't
21 think there is a presumption that, because I originally
22 allowed the subpoena, that I'm not open to USC's
23 arguments. There was some suggestion of that I think
24 in the pleadings.

25 So okay. I think I would first really like to

1 hear from you, Mr. Weinberg.

2 MR. WEINBERG: Thank you.

3 THE COURT: And then we'll let USC respond.

4 MR. WEINBERG: Do you mind if I argue from
5 there?

6 THE COURT: Not at all.

7 MR. WEINBERG: Thank you. My eyes no longer see
8 my notes at this height.

9 THE COURT: I know how that is.

10 MR. WEINBERG: There is three parts to the
11 argument, Your Honor: One part is relevance, which is
12 the relationship between the requested documents and
13 the different theories of defense; a second is
14 specificity, which is the principal position of USC
15 that I want to address and rebut; and third is whether
16 or not the representations that have been made by USC,
17 whether through the Brunold affidavits or through their
18 pleadings, are sufficient as contrasted to, for
19 instance, a certification of the keeper of records that
20 they had conducted an appropriate search of the
21 electronic database or the USC business records and
22 there are no such documents.

23 Let me start briefly there because it was
24 addressed at some length in our sur-reply yesterday, so
25 I'm not going to repeat all of the different

1 representations in the sur-reply. But USC has
2 essentially argued to the Court that, because the
3 Government has made certain allegations, meaning that
4 Mr. Zangrillo conspired to bribe Donna Heinel who was
5 one of the principal USC employees that was separately
6 charged by the Government and was a person who worked
7 with the heads of the Athletic Department, and many of
8 the exhibits that we've provided to Your Honor either
9 were spreadsheets kept by her, transmissions made
10 by her on behalf of the head of Athletics who was
11 Pat Haden during many of the relevant years, to the
12 Admissions Department, that her relationship to
13 Mr. Zangrillo somehow distinguishes his donation to USC
14 and somehow provides USC with a compelling bases to say
15 that none of the documents are relevant.

16 The test of course for 17(c) is not, What does
17 the Government allege? You know, we don't have to have
18 a defense that accepts the allegations, and documents
19 that are subpoenaed don't have to even categorically
20 dispute all of the allegations in an indictment. They
21 have to be material to a defense, and there are
22 multiple defenses here to which these documents are
23 material.

24 And I think I'll start there so that Your Honor
25 has a full sense -- I know the Government's here, but I

1 feel at this point, even despite some of the ex parte
2 proffers that were made in order to generate this
3 litigation, I need for the Court to understand the
4 different defenses because they directly correlate to
5 the documents. The documents clearly are admissible,
6 so when you go to the *Nixon* test of relevance,
7 admissibility and specificity, these are business
8 records or records or documents that would be
9 meaningfully relevant because they exist. One defense
10 to the case --

11 THE COURT: Excuse me. When you say
12 meaningfully relevant because they exist, are you
13 talking about an exception to the hearsay rule?

14 MR. WEINBERG: Yes, that they are not even
15 offered for the truth of a certain statement, like, Is
16 this man a prospective donor, or, Did this man pledge
17 to donate \$100,000 if his kid was admitted? The fact
18 that there's a document containing so many references
19 to donations makes that document non-hearsay but
20 relevant and admissible to support a defense.

21 THE COURT: Okay.

22 MR. WEINBERG: But the one defense that I think
23 is compelling in terms of the Court's analysis of the
24 documents is the prong of 18 USC 1349, the conspiracy
25 count that's charged in Count I, and that it

1 constitutes the overriding part of the allegations of
2 fraud. There are two prongs: One is that there was an
3 underlying fraud that deprived USC of money or
4 property. These documents are highly relevant to show
5 that USC did not consider itself a victim denied of
6 money or property by Mr. Zangrillo; instead, they
7 received a donation that enriched the school, that
8 provided the school with money. There is no losing of
9 money or property by USC. The donation by
10 Mr. Zangrillo and the donations made by so many other
11 parents of so many prospective students, either before
12 or right after the admission of their student, is the
13 antithesis of a victim of a fraud.

14 But more than that, the Government charges that
15 these payments caused the deprivation of honest
16 services, and you know, what that means essentially is
17 that Mr. Zangrillo was being charged as an aider an
18 abetter, as a -- since he's not employed by USC, the
19 allegation is he's causing an employee of USC to
20 compromise her loyalty to her employer by providing,
21 through Mr. Sing er, a donation to USC that ends up
22 with Ms. Heinel being corrupted and, therefore, USC
23 being denied the honest services of its employee.

24 And, therefore, to the extent that the documents
25 that I'm seeking, and we've provided Your Honor with

1 certain documents, Exhibits 1 through 12, essentially
2 show that Ms. Heinel was working with the Athletic
3 Department, that she was passing on VIP lists from her
4 immediate employer who was Pat Haden who was the
5 Athletic Director for many of the years that these
6 lists were being passed to Admissions, that she was
7 acting in a manner that was consistent with the
8 direction of her immediate supervisor, Pat Haden.

9 And the law, and it comes ironically from
10 *US v. Skilling*, which is the Fifth Circuit case that
11 led to the Supreme Court case that narrowed honest
12 services to bribes or kickbacks, but the Fifth Circuit
13 dealt with the private conflict of interest or causing
14 the breach of honest services by an employee to an
15 employer. And the case, it's at 554 Fed. 3d 529, and
16 it endorsed an earlier opinion of the Fifth Circuit --
17 and these were *Enron* cases -- and it held that, When an
18 employer creates a goal and aligns the employee's
19 interests with the employer's interests in achieving
20 that goal. And here the goal, I submit, is raising
21 donations, is increasing the Development Office, it's
22 using the admissions process to enrich the school --
23 and the statistics that we provided Your Honor in the
24 earlier exhibits demonstrate that, as to the Athletic
25 Department, and we have five years of data, shows

1 admissions of their selected Pat's list, this VIP list,
2 somewhere between 69 and over 80 percent of the
3 applicants on Pat Haden's VIP list, which goes through
4 Heinel to Admissions, get admitted.

5 THE COURT: Do you think that you can separate
6 out the athletic advantage from the donor advantage?

7 MR. WEINBERG: Those lists contain references to
8 donors in many occasions. In other words, the lists
9 were not athletes, they were not walk-on great athletes
10 that were going to play football for USC or, you know,
11 drive its track and field. Many of the notes on
12 Exhibit 1 where there's 221 VIPs, special-interest
13 students, who's got an application that goes to
14 Admissions, they list in one of their -- first of all,
15 they list who's sponsoring them, which individual,
16 despite the Government claim that Admissions doesn't
17 know who sponsored them, which I consider to be fairly
18 implausible, given that we have letters from Admissions
19 back to Athletics saying whether they were admitted or
20 denied. How do you know if they're -- how do you send
21 those letters unless you know who the sponsors are?
22 And you have other emails showing multiple parties are
23 interested in this applicant, and we've referenced that
24 in our submissions.

25 THE COURT: But all of the lists you have are

1 from Athletics.

2 MR. WEINBERG: Yes, and that's a corollary of
3 what we received from the Government that received from
4 USC, and I'm not -- I don't know the scope of the
5 subpoena to USC, but I know Mr. Rosen and his team I'm
6 sure gave me the documents they received from USC that
7 were relevant to Rule 16. And if my statements today
8 about Mr. Zangrillo's defense broaden their view of
9 relevance, I'm sure that I will get them from the
10 Government as *Brady* material or as Rule 16 material.
11 But I'm of the view that they don't have -- they
12 certainly didn't give to me -- that they don't have
13 additional documents from other departments, and so --

14 THE COURT: So you're saying -- so just to make
15 sure I'm following everything you're saying, you're
16 saying that this goes to the honest services count --

17 MR. WEINBERG: Yes, Your Honor.

18 THE COURT: -- of the fraud --

19 MR. WEINBERG: Yes.

20 THE COURT: -- allegations?

21 MR. WEINBERG: Because even if the *Enron* cases
22 say that the employer's objective was unethical,
23 improper, illegal, if the employer is, through
24 management, directing the employee -- there it was
25 *Enron*, Andrew Fastow, who was their CFO, and then there

1 was people at a lower level in the *Brown* case, and
2 there was Mr. Skilling trying to take advantage of the
3 lower -- the first case who's unsuccessful because of
4 course he was the CEO.

5 But even if the purpose is illegal, even if
6 USC's practices are illegal -- and I don't believe they
7 are. I want to make that clear. I'm not here to argue
8 that USC's, you know, donation practice, their
9 Development Office, their desire to induce donations
10 and their providing the prospective applicants with a
11 four or five or six or seven times better shot of
12 getting in than they would if their parent couldn't
13 make a donation.

14 It's unfortunately the way American colleges
15 work. We have the *Harvard* case where the Admissions
16 Director got on the stand and testified the average
17 applicant to Harvard gets in 4 percent of the time, one
18 out of 25. If your parent is an alumni and you're a
19 legacy, it's 35 percent, and that's without a
20 consideration of donations, which I'm sure if they
21 superimposed on the parent as an alumni, would drive
22 the 35 percent, you know, sky high.

23 THE COURT: So Donna Heinel, we know that
24 Donna Heinel tagged Ms. Zangrillo.

25 MR. WEINBERG: As a VIP, not through a false

1 athletic profile. She presented Ms. Zangrillo, with
2 others, as a VIP that Athletics was pushing.

3 THE COURT: She presented him with others,
4 meaning with other students, not she and others tagged
5 Mr. Zangrillo's --

6 MR. WEINBERG: Right. She, Donna Heinel, and
7 the Athletic Department tagged Ms. Amber Zangrillo,
8 who's the third of Mr. Zangrillo's daughters, with a
9 tag VIP, and she was presented to Athletics as a
10 transfer student with a VIP tag. And Exhibit 6 to
11 the original 17(c) subpoena has the email where
12 Donna Heinel is saying, No, I didn't present her as an
13 athlete; I presented her as a VIP, and she got in.

14 THE COURT: So if you can show that across
15 departments at USC --

16 MR. WEINBERG: Yes.

17 THE COURT: -- others presented students as VIPs
18 with similar donation amounts who were then admitted,
19 that is helpful to you in your defense.

20 MR. WEINBERG: In three or four ways. One, it
21 detoxifies donations, it negates or counters the
22 Government's case that Athletics was some kind of a
23 toxic silo that operated as an outlier to USC. It
24 demonstrates that --

25 THE COURT: Excuse me.

1 So, for example, if the Government were then to
2 say, Oh, it was only because Donna Heinel tagged her
3 that she got this special attention, whether it was
4 from Athletics or a donation, you could say, No. Other
5 people in other departments did a similar thing. But
6 aren't there too many other characteristics of a
7 student that are taken into account other than just the
8 donation?

9 MR. WEINBERG: Sure. And if I was arguing that
10 a donation guaranteed admission, then I would be out of
11 luck because there are denials, not many, but there are
12 denials in the spreadsheets that USC originally denied
13 possessing in their Admissions Department.

14 THE COURT: But how are you -- what, are you
15 going to hire an expert to say --

16 MR. WEINBERG: Yes.

17 THE COURT: -- the scores are similar, the
18 extracurriculars are similar, the donations are
19 similar, et cetera, et cetera? I mean, if they're
20 saying a donation is just one part of a holistic
21 consideration of the student, even if you get these
22 donated -- this information about who else in other
23 departments donated things, how are you going to use
24 that to show that your student is the same?

25 MR. WEINBERG: Well, that question requires me

1 to identify the different defenses. That answer would
2 be highly important.

3 First of all, it would detoxify the donation.
4 Government charges it's a bribe; I charge that it's a
5 regular donation that parents make, and the
6 spreadsheets in the Athletic Department show pledges,
7 future donations. They even show this parent's
8 expected to make a donation even though there's been no
9 pledge or promise.

10 I'm convinced reasonably that this is not just
11 Athletics to Admissions like some, you know, little
12 partnership; that this cuts across the other
13 departments. We have some evidence it cuts across the
14 Marshall School of Business because we have Exhibit 13.
15 We know the President is saying, I have a special
16 interest in certain students. And the purpose of the
17 subpoena is to essentially detoxify donations and show
18 that they're a regular way that parents act in behalf
19 of their students to inflate the chances, not to give
20 them a guarantee --

21 THE COURT: And also to get it away from the
22 Athletics Department alone?

23 MR. WEINBERG: Yes. It gives me the -- and, you
24 know, the more this is a University-wide practice, the
25 less the school's a victim, the less likelihood it is

1 that a donation would be conceived of as a bribe, and
2 the less likely that a jury would find that Ms. Heinel,
3 by dealing with Mr. Zangrillo through Mr. Singer, is
4 breaching her duties to the University. If I could
5 establish that she's working through Athletics, that
6 goes part way. If I can establish Athletics is
7 consistent with the Marshall School of Business or the
8 History Department, that all goes to show the normalcy,
9 that this is the normal practice of this corporation,
10 this University.

11 Third, it goes to Mr. Zangrillo's state of mind.
12 And I could provide the Court in camera or ex parte a
13 document which reflects his awareness of the VIP
14 program, his express awareness that students get in as
15 VIP-tagged before his donation, before he dealt with
16 trying to help his daughter Amber get into school.

17 And so this all goes to circumstantially prove
18 his good-faith defense, that he was not acting
19 believing that he was a criminal trying to defraud USC,
20 prong one of their fraud charge, or that he was causing
21 Singer to cause Heinel to breach her services to USC;
22 he was acting in good faith believing that what Singer
23 was selling him, which is Heinel was helping, you know,
24 get students into school, was real.

25 The statistics that Your Honor asked about are

1 also important because it's one thing if 11 percent of
2 the undergraduates get in, in their requests for
3 admission. When -- Mr. Brunold originally filed an
4 affidavit saying, Across the board, less than
5 50 percent of special-interest-tagged students get in.
6 He has now supplemented his affidavit when he looks at
7 my exhibits and now says, I was only thinking about the
8 fall semester.

9 Well, that's only really a material change if
10 you're worried that the under 50 percent is really over
11 50 percent when you add the spring to the fall. And
12 these charts show a lot of these VIPs get admitted and
13 deferred to the spring term.

14 So let's assume 55 percent. I don't know the
15 statistics. That's why we need the documents. But the
16 case law's clear, if you have a reasonable basis to
17 believe the information is contained in the documents,
18 that a subpoena is allowed. I don't need to know the
19 code of the document; I need to make a principled
20 presentation that there is a likelihood that other
21 departments than just Athletics are advancing VIPs, are
22 getting their responses to their VIPs and that USC
23 knows who gets in from the VIP list.

24 And it may not be on one list, but it's on
25 multiple lists, if not on one list, and that USC knows

1 who made donations. They even have "proposed donation,
2 pledge donation, future donation, hopeful donation" --

3 THE COURT: But this is on Ms. Heinel's
4 documents; right?

5 MR. WEINBERG: This is -- it's on two sets
6 of documents, Your Honor: One is a document
7 attached to the original 17(c). There's two
8 documents there, when Your Honor goes back and looks at
9 it. One is Exhibit 2, which says, VIP Transfer
10 Document -- Spreadsheet. And that is a document that
11 we have the email for. It's Exhibit 2 of 4 -- I guess
12 it's 422 would be the original --

13 THE COURT: So that's from someone to Donna?

14 MR. WEINBERG: Yes, that's from Brunold, if I
15 recall correctly.

16 THE COURT: I think it says Robinson, but --

17 MR. WEINBERG: It's from Tim Brunold to
18 Kirk Brennan, "Transfer VIP Spreadsheet." And
19 that's --

20 THE COURT: This is attached to your original --

21 MR. WEINBERG: Yes, the 422. I can give the
22 Court another copy of that if it's not readily
23 available.

24 THE COURT: Okay. Anyway, go on.

25 MR. WEINBERG: And Exhibit 4 to that same

1 document, Your Honor, is the donor sheets; in other
2 words, it's USC's documents that are redacted but
3 contain the name Robert Zangrillo and the \$50,000
4 donation and state that he's the student of a father --
5 he's the father of a student who's attending, which
6 that's a document that comes from the Development
7 Office.

8 And it is inconceivable that the Development
9 Office doesn't have a document or database for all the
10 other donors or potential donors whose kids were
11 admitted to the school. How do they know they were
12 admitted? They learn through Admissions. They keep a
13 list. It's a Development Office, and Exhibit 4
14 demonstrates incontrovertibly that USC, despite all of
15 their denials in their paperwork, have documents that
16 demonstrate, Who are the students that got in from the
17 VIP list? Who are the parents that are donating money?
18 Who are the parents that we want to go to, to get
19 money?

20 And the Government -- you know, the USC says,
21 Well, you have no reason to believe that we have such
22 documents. That's very different -- it makes me -- you
23 know, they're a corporation. They have an IT
24 Department, they have a server, USC.edu. It's a major
25 company in Los Angeles. When I have a client who's an

1 executive and I ask a corporate -- the general counsel,
2 I need the emails to my client, it takes about 12 hours
3 or 24 hours for a delivery, a FedEx, to come to me with
4 all my client's emails.

5 This is not hard, in other words. They could --
6 instead of saying, There's no reason to believe, they
7 could easily conduct searches of the server, start with
8 "Tim Brunold," the Admissions Director; "VIP, special
9 interest," and you will predictably generate documents
10 that match the subpoena. Mr. Brunold says now, again,
11 in his second affidavit, that he has no recollection or
12 never had a VIP -- University VIP spreadsheet. And
13 then he says, But if I did have it, it's no longer in
14 existence. And this is on I think Paragraph 4 of his
15 affidavit.

16 But when Your Honor looks at Exhibit 3 that we
17 presented in our opposition, he's saying, "I've just
18 gone back through today's Subco. docket and
19 cross-referenced it with my University-wide VIP
20 spreadsheet." He talks about someone being approved
21 for the spring by the President in this single-page
22 document that we got from the Government. "The
23 following are on my VIP spreadsheet as 'wait for
24 Subco.' I haven't cross-referenced them. Please
25 report the decision back so I can update the VIP

1 spreadsheet."

2 That's his words contemporaneous in March of
3 2016. If there's a University-wide VIP spreadsheet,
4 that answers by itself most of the requests in the
5 17(c) subpoena.

6 THE COURT: So, obviously, you know what USC
7 says about that email.

8 MR. WEINBERG: It's staggering to me that a
9 university, three years ago, has an Admissions Officer
10 saying three times in a single email, I'm referring to
11 a VIP spreadsheet, and it's either something he
12 intended to create -- that's not consistent with the
13 language of the email. It's something that, if I ever
14 had, I don't have anymore? Universities don't destroy
15 spreadsheets.

16 This is three years ago. The VIP transfer
17 spreadsheet referred to in Exhibit 2 of I think
18 Docket 422, the original 17(c) request, is from
19 July 20, 2018. I have no reason to believe that USC is
20 busy destroying VIP or special interest spreadsheets.
21 I have no reason to believe that they don't embrace a
22 program that raises millions and millions of dollars.

23 But they'd certainly keep these spreadsheets to
24 indicate who gets in, who doesn't get in, who the
25 donors are, who are not the donors. And Development I

1 know has information from these spreadsheets because
2 they have their own spreadsheet, which is Exhibit 4 to
3 the original 17(c) subpoena.

4 Universities don't destroy documents, or they
5 shouldn't destroy documents, and I have no reason to
6 believe they do. But it is implausible that these
7 kinds of documents are not on the USC server today, and
8 I have no certification from a responsible keeper of
9 records that an IT USC has searched the server,
10 searched the archives, searched the "delete" box and
11 that they have no documents that directly relate to the
12 emails.

13 And, again, I got a subset of Mr. Brunold's
14 emails, to the extent they were late, to Athletics.
15 And I'm not blaming the Government. That's what they
16 subpoenaed. That's their case, which is why my only
17 avenue to broaden my receipt of documents is through
18 the vehicle of 17(c), and that's why we're here,
19 Your Honor.

20 THE COURT: So, going back to your defenses,
21 what about materiality?

22 MR. WEINBERG: The materiality argument,
23 Your Honor, is that, if I was to get a University VIP
24 spreadsheet or lists from each of the departments to
25 Admissions and then their responses, as they made to

1 Pat Haden and Donna Heinel year after year, these five
2 Exhibits, Nos. 7, 8, 9, 10 and 11, to our opposition,
3 that send back to them a statement, This is who's
4 admitted, this is who's admitted for the spring, this
5 is who's denied, if I was able, through either of those
6 documents, which are the documents going back to the
7 sponsors and the other departments, we can do the
8 statistics. We have an expert. We would have that
9 expert, you know, look at the documents.

10 I'm not asking USC to do a statistical analysis
11 for me unless they have it, I'm not asking them to
12 compile things, I'm not asking them to make things up;
13 I'm asking them to push buttons and download documents
14 that are directly relevant and material to the defense.

15 Your Honor asked about materiality. It's
16 really close to relevance. If I was able to show that
17 Donna Heinel's practices as to Zangrillo, labeling
18 someone VIP, getting a \$50,000 donation, was consistent
19 with what was done by 15 other departments and that
20 they sent their lists in, she sends her list in, then
21 I'd show this can't be a breach of honest services.
22 The entire University endorses what she did for
23 Ms. Zangrillo.

24 And maybe she did other things, Your Honor. I'm
25 not here to prosecute her or to detoxify the

1 Government's case against her. You know, she may have
2 done things with people that she promoted as athletes
3 that weren't athletes. But I'm here to represent
4 Mr. Zangrillo, and that's not what she did for him.

5 I'm not here to in any way endorse Mr. Singer.
6 He was a toxifying force in this case. There wouldn't
7 be a case without Singer inducing these parents to do
8 things that they didn't otherwise want to do. If
9 Singer was the Government, everyone would have an
10 entrapment defense. I've heard his audios. He's
11 manipulative, he's persuasive, and he takes parents
12 from helping them through legitimate means and walks
13 them slowly and persuasively -- it's the definition of
14 private entrapment, which is not a defense -- you know,
15 to get things to do that they don't intend to do.

16 So Singer was involved. Mr. Zangrillo hired
17 Singer. But in this case, Ms. Heinel did what USC
18 wanted her to do, she labeled someone a VIP. Why? Her
19 father was wealthy. What did her father do? He made a
20 donation to the school. That's not a crime.

21 THE COURT: So there is a footnote in USC's
22 brief saying, "No one is disputing that Mr. Zangrillo's
23 daughter was admitted in a legitimate fashion."

24 MR. WEINBERG: Yes, but I need more than a
25 single statement to show a jury; I need to be able to

1 show them documents that being admitted as a VIP is not
2 evidence of a crime, that, Look at all these people who
3 were admitted VIP. I need a number. USC says they
4 have no number. Give me the documents, I'll add them
5 up, like we did with Exhibit 1, 221 athletic
6 applicants.

7 I need to know that, of those VIPs, how many of
8 them like Mr. Zangrillo gave a donation after or before
9 their kid was accepted so that I can detoxify the
10 notion that the Government allegation of a bribe is an
11 element of the --

12 THE COURT: Why do you care if someone gave a
13 donation after they were accepted? Don't you really
14 care whether there is some indication that they had
15 promised a donation?

16 MR. WEINBERG: Well, I think in this case, if
17 Mr. Singer promised a donation, that will be part of
18 the Government proof, that part of the Government proof
19 will be that there was a donation from Mr. Zangrillo,
20 that he made a \$50,000 donation, and although --

21 THE COURT: Prior to admission?

22 MR. WEINBERG: After admission.

23 THE COURT: Oh, after admission? I didn't
24 understand that.

25 MR. WEINBERG: And the USC says, I bet that only

1 Ms. Heinel knew that he made that donation, like it's
2 some covert bribe that she kept for herself or she put
3 it into a program. I have provided them with a
4 document showing the USC financial record showing
5 Mr. Zangrillo's donation, and I can provide it to the
6 Court.

7 Mr. Pabian, would you give it to the Clerk,
8 please, the USC document.

9 MR. PABIAN: Yes.

10 THE COURT: Does the USC know what you're
11 showing me?

12 MR. FUCHS: Yes. Yes, Your Honor, although we
13 did discuss having this filed under seal.

14 MR. WEINBERG: I have no objection.

15 THE COURT: Certainly we'll do that.

16 MR. WEINBERG: No objection.

17 And then Your Honor has Exhibit 4 from the
18 initial pleading, which shows Mr. Zangrillo's --

19 THE COURT: So just tell me what this shows.

20 MR. WEINBERG: This shows Mr. Zangrillo's
21 \$50,000 donation that was -- went to Athletics and was
22 used to support the USC volleyball team. And his
23 daughter wasn't a volleyball player. It was a
24 donation, and I think what the evidence shows in this
25 case is that people like Ms. Heinel and others at other

1 schools and Mr. Singer, you know, used this
2 information -- said, you know, We're in Los Angeles,
3 some of our coaches can't afford rent, the
4 volleyball -- you know, the athletic place, the
5 locations are falling apart, Can you -- you know, can
6 you give a donation? And Singer used that information,
7 and he funneled people to Ms. Heinel.

8 But the moneys largely, you know, footnote
9 largely, went from Singer to Heinel or a parent to USC
10 into an Athletic Department that wasn't USC football at
11 the coliseum; it was one of these under-funded
12 programs, and this shows Mr. Zangrillo was responsible
13 for a huge percent of the funds that year for the
14 volleyball program. And I'm sure there is exhibits
15 that show that other parents' donations went to these
16 less-funded programs at the school.

17 THE COURT: So if he makes a donation after his
18 daughter is admitted, did he pledge the money before
19 his daughter was admitted?

20 MR. WEINBERG: My guess is, Your Honor, that
21 Mr. Singer will testify or that the Government will
22 contend without his testimony that, based on other
23 evidence if they elect not to call Mr. Singer, that
24 Mr. Singer said to Ms. Heinel, just like he would have
25 said with other candidates that he was pushing into

1 Athletics to get VIP tags or to make them athletes when
2 they weren't. I don't know the facts about all the
3 other cases, but I know this one. I'm sure Singer was
4 pushing Ms. Heinel that Mr. Zangrillo will make a
5 donation, he will get money to the school.

6 THE COURT: So was that ever communicated to the
7 Admissions Office before his daughter was admitted?

8 MR. WEINBERG: I don't have the documents. I
9 have documents that date from 2012 to 2015, but I don't
10 have a 2018 spreadsheet that would show exactly what
11 Ms. Heinel, through the Athletic Department, was
12 telling Admissions about Ms. Zangrillo. I do know that
13 when you're tagged VIP, it radically increases your
14 chances for admission, and Mr. Zangrillo knew that.

15 THE COURT: So why are you -- but now I'm --
16 knowing that the donation was made after she was
17 admitted, why are you comparing her to people who had
18 promised money in order to get admitted?

19 MR. WEINBERG: Because I think that the evidence
20 will be that Mr. Singer, on Mr. Zangrillo's behalf, as
21 his agent, if you will, as his conduit, as his
22 intermediary, made a promise, If Amber Zangrillo gets
23 admitted, Mr. Zangrillo, who's a wealthy man, like so
24 many of my other clients -- he vouched for his clients.
25 There's even audios where he says to a client, "I

1 vouched for you. I have to pay for you. If you don't
2 pay me, I'm out."

3 So I believe the Government will be able to
4 prove that Singer tells Heinel at USC, Zangrillo will
5 make a donation if the kid gets in. So I think they
6 have both the before, the pledge through Singer who was
7 reliable to them, or at least reliable to Heinel, he
8 came through, he, you know, provided donations to the
9 Athletics Department, and Mr. Zangrillo made a donation
10 after the fact.

11 THE COURT: Do you have any evidence that Heinel
12 communicated the potential donation to Admissions?

13 MR. WEINBERG: Only the -- and this is precisely
14 why I need the documents, Your Honor, which is that
15 circumstantial evidence demonstrates that Admissions
16 routinely, regularly, explicitly got information about
17 Athletics' VIPs regarding future donor, past donor,
18 grandmothers of donor, grand --

19 THE COURT: Your sentence is so long. Just say
20 a shorter sentence so I can follow what you're saying.

21 MR. WEINBERG: Circumstantial evidence is what I
22 have because of the limits of what I've received. I'm
23 asking for more. Athletic --

24 THE COURT: But you -- it just seems to me a
25 good foundation for what you're asking for would be to

1 first establish that somehow Admissions knew that your
2 client was going to make a donation and that's how his
3 daughter got in.

4 MR. WEINBERG: And the foundation I have,
5 Your Honor, is, since I lack an audio of Heinel's
6 conversations with Brunold and the documents I have are
7 a subset of the documents that I represent I believe
8 exist on the USC server, is I've given documents to the
9 Court, Exhibits 1 through 5 are spreadsheets, 1, 2, 4,
10 5, that show donations, even though, if we trusted
11 Mr. Brunold's affidavits, he never knew any prospective
12 student was a donor. We've got Pat Haden's VIP lists,
13 and they said why Haden was recommending them. We then
14 have --

15 THE COURT: So what's the timing of the
16 spreadsheets you have versus the timing of the
17 spreadsheets you would need?

18 MR. WEINBERG: We have a comprehensive
19 spreadsheet 2012 to 2015, and we have the documents, if
20 I can just see, for --

21 THE COURT: When did Ms. Zangrillo apply?

22 MR. WEINBERG: '18.

23 We have Exhibit 5, which is 2015, and Exhibit 6
24 is 2016, and these are all spreadsheets with the
25 listing -- and 7 is later in 2016. So, you know, '17

1 and '18, you know, we don't have. So I think that,
2 you know, given the explicitness of Donna Heinel and
3 Pat Haden's listing of donors and donations in these
4 spreadsheets, and given some of the emails where they
5 talk about, This guy's a donor, this guy's going to be
6 a donor, and given the continued interest of the
7 Development Office, they would want to know about who's
8 the potential donor so when the kid gets in, they can
9 call them up.

10 THE COURT: Yeah, okay.

11 MR. WEINBERG: And Exhibit 4, again, to the
12 original subpoena lists the database, it's an excise
13 from the database of the Advancement Office that has --
14 the Development Office that lists all of the donors,
15 and that's the list, "Zangrillo, father of prospective
16 student."

17 And I suggest just that document, which is one
18 of the specific requests we make in the subpoena, would
19 give us what we need, which is it would give us a total
20 of the donors who are fathers or daughters or
21 grandfathers of students because there's a column for
22 students and a column for donations, and to combine
23 that with the lists of the special student -- the
24 special-interest students who were admitted, we can
25 easily do the percentage of those that were admitted in

1 correlation to a donation that came before or after.

2 THE COURT: Okay. Okay. So do you want to wrap
3 up, and then I'm going to let USC --

4 MR. WEINBERG: Thank you, Your Honor.

5 The wrap-up is essentially that the cases don't
6 require that all the information you require be in a
7 single document. They don't require that I know the
8 codes or the exact names, although we know the names of
9 some; they require a reasonable presentation through
10 the exhibits that we gave the Court that we have a
11 reason to believe that USC's statements that, There's
12 no reason to believe we have these documents, are
13 untrustworthy and unreliable. They're a major
14 corporation. They can do a search.

15 It's up to Your Honor whether to require a
16 search of 22 department heads for lists of their VIPs
17 or whether to start, for instance, with Mr. Brunold.
18 And if he is treating the other departments like he
19 treats Athletics, he's got emails, and he's got lists,
20 and they're not just from Athletics going to him, which
21 lists the tagged students or the students they asked to
22 tag, and he communicates results.

23 Why would he only communicate results to
24 Pat Haden and Donna Heinel when he's got other
25 departments he represents as the Dean of Admissions,

1 and he's got emails to Development to let them know
2 which students got in because Development is the group
3 that follows up by talking to the parents about
4 donations. Exhibit 13 is a perfect example. You have
5 Athletics and Development talking about a parent who's
6 pledged 1 to 3 million -- or they think he'll give 1
7 to 3 million if their kid gets in, and they're talking
8 about dividing it between Marshall and Athletics.

9 So I believe we've met the triple requirements of
10 relevance, admissibility, specificity, and we ask the
11 Court to grant the 17(c) subpoena and order USC to do
12 more than just say they have no reason to believe the
13 documents exist.

14 Thank you.

15 THE COURT: Thank you.

16 Yes, Mr. Fuchs.

17 MR. FUCHS: Thank you, Your Honor.

18 And, Your Honor, I welcome any questions you
19 might have because this is a complicated fact pattern,
20 and I think I can help straighten out some of the
21 confusion that's been created here in connection with
22 Defendant Zangrillo's papers and the argument today.

23 Your Honor, as you know, *US v. Nixon* is the
24 controlling authority with regard to Rule 17 subpoenas,
25 and *Nixon* makes clear, Your Honor, that Rule 17

1 subpoenas are not designed to be discovery devices or
2 investigatory tools, and yet that's exactly what
3 Defendant Zangrillo is doing here. He's using his
4 subpoena to USC as a means of conducting a massive --
5 and I don't say that lightly -- a massive investigation
6 of USC's use of special-interest tags over a four- to
7 five-year period.

8 Your Honor, Defendant -- Mr. Weinberg and
9 Defendant Zangrillo said that USC's primary argument is
10 specificity. Your Honor, USC's primary arguments are
11 that the special-interest process, the use of
12 special-interest tags, is totally irrelevant to the
13 charges in this case and the conduct that was charged
14 by the Government. USC's other primary argument is
15 that it would be a massive burden to try to unearth the
16 information that Defendant Zangrillo has requested.

17 And I'd like to -- after I address -- I'd first
18 like to address the difference between Donna Heinel's
19 scheme and the special-interest process because they're
20 completely different and unrelated. And, secondly,
21 Your Honor, I would like to go to the subpoena itself.
22 That's the document that you have been asked to
23 evaluate and to quash, and I want to go through those
24 requests, as written, not as they've somehow morphed
25 into this amorphous request.

1 THE COURT: Well, they can be rewritten. I
2 mean, the fact that the subpoena may be inartfully
3 worded or he didn't say "documents showing" doesn't
4 mean that it's not proper. I mean, I think --

5 MR. FUCHS: But I think we should focus on what
6 has been requested, whether it's in that document or in
7 the opposition, because I think that will demonstrate
8 the burden, Your Honor.

9 THE COURT: Well, I think one of the things
10 about the subpoena on its face is I don't think -- I
11 think it's obvious that Mr. Weinberg did not really
12 understand your process, so he made requests sort of in
13 the dark for things that I do think are relevant to his
14 case, but he doesn't know until he confers with you
15 whether it is burdensome or whether the documents
16 exist. So I agree with you the subpoena has problems,
17 but I don't think it's fatal to his whole request,
18 so --

19 MR. FUCHS: And, Your Honor, I'll try to explain
20 the process a bit here by explaining the difference
21 between Heinel's scheme, which was rooted in the
22 Athletic Subcommittee process, versus the VIP process,
23 totally different and untainted by scandal, not charged
24 by the Government in any of its cases. And then I'll
25 try to explain why it would be such an incredible

1 burden to unearth what it is that Defendant Zangrillo
2 wants.

3 First, Your Honor, Donna Heinel's scheme was to
4 take students, applicants, who were not athletes and
5 package them as athletes so that they could be
6 considered for admission by a group within USC's
7 Admission Department that vetted all student athletes,
8 whether it was a scholarship athlete or, in the case of
9 all of Singer's clients that he pushed through Heinel,
10 walk-on athletes. In return for being packaged as a
11 fake athlete, the parents of the applicant would make a
12 donation to the Athletic Department, to a fund that
13 either Donna Heinel controlled or to another team
14 within the Athletics Department.

15 Donna Heinel, in turn, entered into some kind of
16 consulting arrangement with Rick Singer where she was
17 paid \$20,000 a month over a six- or eight-month period
18 at a minimum. That was the scheme. The scheme had
19 nothing to do with labeling someone as a
20 special-interest candidate.

21 And the reason for that, Your Honor, was that
22 Donna Heinel knew that, if she packaged someone as an
23 athlete that Admissions assumed was an athlete who was
24 desired by one of the teams, she had an extremely high
25 chance of getting that student admitted to USC, a

1 nearly a hundred percent chance.

2 In contrast, the special-interest process offers
3 none of that security.

4 THE COURT: Is the special-interest practice the
5 same as the VIP?

6 MR. FUCHS: Yes. And there is no -- well, the
7 special interest -- tagging students with a
8 special-interest tag really means applying one of
9 several different types of tags that collectively are
10 thought to be special interest. USC has lots of tags,
11 Your Honor. USC not only has special-interest tags; it
12 has tags for Roxy applicants, it has tags for
13 first-generation students. These are all ways of
14 distinguishing particular students in a particular way.

15 THE COURT: So what is the designation -- what
16 does the designation VIP signify?

17 MR. FUCHS: The way a special-interest tag, or
18 VIP tag, to use your term, Your Honor, works is anyone
19 from 22 colleges throughout USC and other departments
20 within USC can apply a special-interest tag, and they
21 can do it for any number of different reasons.

22 THE COURT: So I think you said that, but what
23 specifically does VIP signify?

24 MR. FUCHS: Well, there is no, quote, unquote,
25 VIP tag. There are six different tags that, as a

1 collective group, are thought to be special-interest
2 tags.

3 THE COURT: So why do you see VIP, VIP, VIP?

4 MR. FUCHS: It's shorthand as a way of referring
5 to six different tags, which include, for instance, a
6 Dean's tag, from any one of 22 colleges throughout USC.

7 THE COURT: So is there any tag specifically for
8 donors?

9 MR. FUCHS: No.

10 THE COURT: And when you just say VIP, then a
11 person looking at that list wouldn't know what the
12 reason was that the person had been designated VIP?

13 MR. FUCHS: Correct. Your Honor, Ms. Heinel
14 happened to maintain her -- I'll step back and say that
15 not only did Ms. Heinel have this alleged scheme by the
16 Government going where she would put people through
17 Subco. as fake athletes in return for donations to a
18 fund she controlled or other sports teams at USC, but
19 she also was the person who maintained the
20 special-interest or VIP list within Athletics.

21 She would collect information from other people
22 in the Athletics Department, and she would then pass
23 that on to Mr. Brunold, as reflected in the documents
24 that have been attached to the opposition, all of which
25 were produced by USC and all of which relate to the

1 Athletics Department. There's not a single document
2 that was attached to the opposition which relates to
3 anything other than Donna Heinel and her lists and the
4 Athletics Department.

5 THE COURT: So when Mr. Zangrillo's daughter was
6 referred to Admissions by Donna Heinel, she was not
7 referred as an athlete?

8 MR. FUCHS: Yeah. What ended up -- as alleged
9 by the Government, what ended up happening was this,
10 and I think it's supported by what's on the wiretap
11 conversations: The arrangement with Mr. Zangrillo,
12 which is really all that matters here, the conduct and
13 deal that he cut, was no different than any other deal
14 that is at issue in this case.

15 He -- his daughter had applied for admission for
16 the first time in 2017. She had been denied on her
17 merits. She hired Singer to help get her in through
18 his side door. Singer's side door was to package
19 people as fake athletes and have them submitted by
20 Heinel to Subco., nothing to do with special interest,
21 to Subco. for admission. That was the deal here. That
22 was the plan here.

23 THE COURT: And what is Subco.?

24 MR. FUCHS: Subco. is the Subcommittee of the
25 Admissions Department that evaluates all student

1 athletes for admission to USC, whether it be a
2 scholarship athlete or a walk-on. Every single one of
3 Singer's clients went through Subco., with the
4 exception -- although that was charged -- with the
5 exception of Amber Zangrillo, but that was a quirk,
6 according to the Government, that --

7 THE COURT: Well, so --

8 MR. FUCHS: Yes.

9 THE COURT: -- how about according to you?
10 Like, how did she get through?

11 MR. FUCHS: Well --

12 THE COURT: This is what he's trying to figure
13 out because, according to the Government, it really
14 doesn't matter. The Constitution gives him a right to
15 obtain information to put on in his defense. I mean,
16 17(c) is protecting a really fundamental Constitutional
17 right that a Defendant has to compulsory process. So
18 according to the Government doesn't really matter;
19 it's, What information does your institution have?

20 MR. FUCHS: Our institution has the following
21 information with regard to Amber Zangrillo, Your Honor:
22 That Heinel cut a deal to have her presented as a fake
23 women's rower.

24 THE COURT: But she in fact was not then
25 presented as a fake women's --

1 MR. FUCHS: She was not. But that was not known
2 to Mr. Singer or Mr. Zangrillo.

3 THE COURT: So how did -- what did USC do with
4 regard to her application?

5 MR. FUCHS: It considered her -- Ms. Heinel
6 lobbied the Admissions Office, after having cut the
7 deal with Mr. Zangrillo and Rick Singer, to have her
8 admitted as a transfer student with an application that
9 listed her as a crew athlete and with an application
10 that had other false statements, including the classes
11 that had been taken for her by one of Singer's
12 employees.

13 And she was ultimately admitted not as an
14 athlete but based on the work that Heinel did. Heinel
15 made the executive decision, without talking to Singer,
16 without talking to Zangrillo, that she would not put
17 her through as an athlete. The deal that was cut, the
18 conduct that has been charged, the conspiracy alleged
19 has to do with the deal that was cut, not how she
20 ultimately was admitted, and --

21 THE COURT: So if the process by which she was
22 admitted was the same, as the Defendant is saying here,
23 as the process that many legitimate students went
24 through to get admitted and if the cheating was not
25 material to her admission and if what Donna Heinel was

1 doing in this specific case, not in other cases, was
2 the same as what other legitimate department heads were
3 doing to push their candidates, then I think that is
4 relevant to his defense.

5 MR. FUCHS: But, Your Honor, none of that was
6 happening here. The only thing that caused her to
7 spring into action on behalf of Mr. Zangrillo and
8 Mr. Singer was the deal, as cut. USC does not sanction
9 or somehow -- did not somehow authorize her to falsely
10 represent students as athletes. They never would have
11 done that, they never did do that. The --

12 THE COURT: Did she do that in this case if they
13 didn't admit her as an athlete?

14 MR. FUCHS: No, she didn't ultimately present
15 her through the Subcommittee. But, Your Honor, it's
16 the conduct charged as part of the conspiracy which is
17 the relevant conduct here.

18 If what had happened in this case was that
19 Mr. Zangrillo had struck a deal with Singer and Heinel
20 to pay \$50,000 to put his daughter through as a VIP
21 candidate, we wouldn't be here, the case would not have
22 been charged because there's nothing improper with
23 putting someone through as a special-interest candidate
24 because everyone knows the student is a
25 special-interest candidate. There's a flag on their

1 application.

2 What's problematic here, Your Honor, is both the
3 cheating, taking the -- having classes taken by someone
4 else and the deal that's part of the conspiracy that's
5 been charged to present her as a fake athlete. That's
6 where the crime occurred, when they cut that deal.

7 How she ultimately was admitted is not part of
8 the crime charged here and, therefore, isn't relevant
9 and certainly shouldn't lead to a wholesale exploration
10 of the application of special-interest tags, which
11 happen for any number of reasons across the entire
12 University and are the same as all the other tags that
13 are applied and are used in one way other another at
14 every university in the country.

15 That type of wholesale discovery totally
16 unrelated to the charges, Your Honor, is not material,
17 will not advance the defense. And not only that, it's
18 widely burdensome to USC, and maybe I should shift to
19 talk about that, Your Honor.

20 THE COURT: Yes, tell me about the burdensome
21 part.

22 MR. FUCHS: Your Honor, when we started with our
23 motion to quash, we responded to Mr. Zangrillo's
24 request by making clear that we don't have any document
25 that is responsive to Request A that says, "The number

1 of prospective students, including transfer students,
2 designated as VIP, special interest and/or University
3 advancement from January 1, 2015, through February 28,
4 2019."

5 THE COURT: So let me make this clear: You're
6 not saying we don't have one single document? Because
7 I think what Defendant has been saying is, Well, I mean
8 documents sufficient to show. So if he had worded
9 that, Documents sufficient to show, would you have it?
10 I know you don't have one document.

11 MR. FUCHS: Yeah. We didn't track, Your Honor,
12 the number of special-interest students who are tagged
13 in a particular year. We then don't have, on top of
14 that, because this is all cumulative, this subpoena, we
15 don't then have on top of that all of the reasons --
16 who was their sponsor, why they were tagged --

17 THE COURT: Sure.

18 MR. FUCHS: -- what department. We don't have
19 that. We also don't have the donation history for each
20 of those people.

21 THE COURT: So it's a little hard to believe
22 that your Development Department doesn't keep a list of
23 donors.

24 MR. FUCHS: We do have that, Your Honor. But
25 let me explain what would have to happen here to give

1 him what he wants. He wants -- he has said he does not
2 want us to compile the information for him, he doesn't
3 want us to go create a chart listing all of the
4 special-interest --

5 THE COURT: Let's say, for example, you had the
6 Heinel list from each year, if Donna Heinel is sending
7 the Director of Admissions, Here's our list from each
8 year --

9 MR. FUCHS: Yes.

10 THE COURT: -- how about that?

11 MR. FUCHS: We've produced Donna Heinel's entire
12 email box to the Government. That was in connection
13 with a search warrant. In addition, we've -- that was
14 250,000 documents, approximately.

15 THE COURT: So she never emailed the Director of
16 Admissions about Mr. Zangrillo's daughter?

17 MR. FUCHS: Your Honor, I have not looked
18 through every one of those documents to be able to
19 answer that question, but what I do know is we've
20 produced her entire email box, and it's been made
21 available to the defense, so they already have all of
22 that.

23 In fact, every document attached, which they're
24 making their case about the special-interest process,
25 came from USC. They have plenty, if they're going to

1 make that argument, if it's going to somehow be deemed
2 relevant and that information is going to be deemed
3 admissible, to do all of that already.

4 What they now want us to do is go to the rest of
5 the University to uncover anywhere else in the
6 University any email where someone within the
7 University designated an applicant as a
8 special-interest applicant. That, Your Honor, would
9 require us to collect --

10 THE COURT: You don't even need to go there. I
11 understand that's too much. But what about, as
12 Mr. Weinberg suggested, emails to the Director of
13 Admissions from department heads saying, Here's our VIP
14 people?

15 MR. FUCHS: We don't -- as part of our internal
16 investigation, Your Honor, we tracked the Government's
17 investigation, which went into the whole Subco. fraud.
18 We did not look into the special-interest process
19 because it had nothing to do with the Government's
20 investigation. So we have never collected documents
21 from anywhere outside of Admissions and outside of
22 Athletics.

23 THE COURT: So I also kind of agree with
24 Mr. Weinberg that to say, We've never collected these
25 before, therefore, they don't exist, is -- I mean, you

1 could look for them; right? I mean, that's what most
2 people do when they get document requests is they see
3 if they have them.

4 MR. FUCHS: But, Your Honor, it's not as simple
5 as pushing a button and searching from a central
6 location. We would need to go and restore inboxes --
7 email boxes for dozens of people throughout the
8 University, run search -- process that, run search
9 terms, review the resulting hits for potentially dozens
10 of custodians at a cost of hundreds of thousands of
11 dollars, if not more, to USC. So it really isn't as
12 simple as pushing a button and searching some kind of
13 magical central repository because it just doesn't
14 exist, it doesn't work that way, at USC.

15 Your Honor, in addition to the issue of
16 searching for stray emails where someone may have
17 designated someone special -- by the way, that's not
18 the preferred approach to designate a special-interest
19 candidate. The preferred approach is the people who
20 have the ability to tag someone would go into the
21 system itself, the student information system, and just
22 apply the tag. So any notion that you're going to get
23 a remotely reliable or complete list from searching for
24 emails wide and far where someone designates someone as
25 special interest is simply not true.

1 And in addition, Your Honor, there is no
2 financial information located -- there's no reason to
3 believe that's going to be financial information
4 located alongside the initial designation. Admissions
5 doesn't maintain any information concerning the amount
6 of money someone might have donated in the past, might
7 be donating in the future.

8 THE COURT: So was Donna Heinel the only person
9 who ever communicated with the Director of Admissions
10 the amount of money that people were planning on
11 giving?

12 MR. FUCHS: Well, I don't know the answer to
13 that, Your Honor, but all I do know is that what
14 Mr. Brunold has said in his declaration, which is that
15 he did -- all he wanted from people was to, first, go
16 into the system, apply the special-interest tag. If
17 you're not going to do that, all I need is the name of
18 the person so that I can apply the tag.

19 He didn't want the sponsor who has designated
20 them. He didn't want any other information about the
21 rationale as to why they were being tagged, for
22 instance, they were a friend of someone at the
23 University.

24 THE COURT: So Donna Heinel was just including
25 all that stuff for fun and he was completely

1 uninterested in how much -- if someone was a million
2 dollar donor or --

3 MR. FUCHS: Your Honor, no. Obviously, I don't
4 think she was providing it for fun, but I do think what
5 was going on was that Ms. Heinel, who was the central
6 repository for special-interest tags within the
7 Athletics Department, was fielding requests from a
8 variety of her colleagues within the Athletics
9 Department.

10 THE COURT: So it's not just her who thinks that
11 information is relevant to the Admissions Department;
12 it's everyone in Athletics who's communicating with
13 her.

14 MR. FUCHS: Well, people within Athletics were
15 providing their basis for why they might have been
16 designating someone -- or wanted someone to be
17 designated special interest.

18 THE COURT: And then she refers that to the
19 Director of Admissions who is totally uninterested in
20 any of that information. He just wants the person's
21 name? He doesn't care why they're being referred in
22 this list?

23 MR. FUCHS: He doesn't enter any of that
24 information. He doesn't consider any of that
25 information in connection with admissions decisions.

1 His staff doesn't. His staff is, in fact, told to
2 ignore the special-interest tags in their first read of
3 applications, Your Honor.

4 THE COURT: The special-interest tags or the
5 donations? No one cares about the donations in
6 Admissions?

7 MR. FUCHS: No one factors in the dona -- no one
8 knows -- Mr. Brunold did get from Donna Heinel
9 information, which in some instances reflected donation
10 or donation potential from particular people who were
11 being tagged, and there are other reasons why those
12 people were being tagged.

13 He did not factor that in to the ultimate
14 admissions decision when he and his staff reviewed
15 those applications. He didn't go back to the Heinel
16 spreadsheet and say, Okay, let me see why this person
17 has a tag and, Okay, they're a family member, they're a
18 donor, in making admissions decisions, nor did he take
19 that information from those columns and input it into
20 the student information system.

21 THE COURT: So someone is tagged --

22 MR. FUCHS: Yes.

23 THE COURT: -- they send the Director of
24 Admissions a very detailed list about why they're
25 tagged, and then the Director of Admissions just

1 considers all the tagged people without any detail?

2 MR. FUCHS: Correct. Yes, that's right.

3 THE COURT: Even though the reason they're
4 tagged is that they're giving money to the institution?

5 MR. FUCHS: That may be a reason why they were
6 tagged.

7 THE COURT: Well, I mean, the list that --

8 MR. FUCHS: Yeah.

9 THE COURT: It's basically that's fine; right?

10 MR. FUCHS: I'm not disputing the fact that the
11 people in Athletics value that. Their job in many of
12 those cases was to raise money for Athletics. There is
13 a development arm within the Athletics Department
14 designed to raise money. But Mr. Brunold did not value
15 that information in making admissions decisions.

16 THE COURT: Well, he did value the information
17 because that's the reason they were tagged, and he's
18 admitting the tagged people at a higher rate; right?
19 He's not ignoring the tags.

20 MR. FUCHS: The tags -- the people --

21 THE COURT: What's the purpose of tagging
22 someone?

23 MR. FUCHS: The purpose of tagging someone is to
24 know that there is some special interest or,
25 alternatively, that they're Roxy or first generation,

1 some unique attribute about a particular student, yes.

2 THE COURT: Including that they're giving money?

3 MR. FUCHS: In those instances where that's why
4 they were tagged, he didn't value that, but that is in
5 fact why they were proposed as a special-interest
6 candidate to Admissions to begin with.

7 THE COURT: Okay. Well, we're just -- it's just
8 semantics. If that's why they were tagged, then he
9 must have valued if then he gives them a special look.
10 But okay.

11 MR. FUCHS: But, Your Honor --

12 THE COURT: Can you just explain -- I'll give
13 you a chance, but can you just explain the email where
14 he says -- the Director of Admissions says, "I have
15 just gone back through today's Subcommittee docket and
16 cross-referenced it with my University-wide VIP
17 spreadsheet"?

18 MR. FUCHS: Yes.

19 THE COURT: And then we get him swearing that
20 there is no such thing as that.

21 MR. FUCHS: Your Honor, that's not what he swore
22 to, but I will explain.

23 THE COURT: Okay.

24 MR. FUCHS: Mr. Brunold had access, of course,
25 to the student information system. He could print out

1 documents, spreadsheets, reflecting any one of the many
2 different types of information contained in that
3 student information system. And he would from time to
4 time either create an electronic document or,
5 alternatively, a hard copy document which contained a
6 number of different fields concerning special-interest
7 students. That's what he was referring to.

8 However, he did not maintain copies of those
9 documents after a particular admissions year was done.
10 He had no reason to do it because anything that
11 ultimately was decided with regard to any
12 special-interest student or anyone else who had a tag
13 was entered into the system, so he didn't need a record
14 somehow of a spreadsheet that had been printed out or
15 created electronically in some particular moment in
16 time. So he didn't maintain them, and he doesn't any
17 longer have those.

18 THE COURT: And they're nowhere in the system?

19 MR. FUCHS: Correct, Your Honor.

20 Now, USC -- and we discussed this in our opening
21 brief. USC has the ability to create a list of all of
22 the people who have been designated as VIP over the
23 50-month period in question. It also has the ability
24 to determine which of those people was admitted.

25 However, as we made clear in our opening brief,

1 in our motion, the case law does not require us to
2 compile information, and the Defendant has said we
3 don't have to compile that information. Instead, where
4 we have now landed is in -- is sort of backing in to
5 that information by searching the entire University for
6 indications of someone having been designated special
7 interest. And that, Your Honor, is where the
8 overwhelming burden lies.

9 In addition, Your Honor, I want to mention that
10 just because someone may have designated someone
11 special interest doesn't mean that they're the sponsor
12 of that person. People have the administrative task of
13 forwarding emails or entering tags. That doesn't mean
14 they're the sponsor, nor does it give any indication
15 whatsoever as to what department they were in, what
16 their title was, who the actual sponsor or the reason
17 why they designated. So we're going to go looking all
18 around the University for these one-off emails where
19 someone may have designated. It's not going to get to
20 the information that's being requested in Request B.

21 And then when you turn to Requests C and D, what
22 would end up having to happen here, Your Honor, is
23 that, because Admissions doesn't maintain any
24 information about donations, because there's no reason
25 to believe other people around the University were

1 sending in information that accurately describes how
2 much money someone may have given over time, we would
3 have to go to the University Advancement Database,
4 which they have now requested en masse, they just want
5 the entire database, which is, Your Honor, a
6 nonstarter, and we would then have to run searches for
7 each person's name who was designated special interest
8 in that database and try to match it to some donation
9 that may have been made. That, Your Honor, is a
10 massive undertaking.

11 And I just want to add a couple of other things
12 to explain our burden. We cannot turn over records,
13 educational records. FERPA prevents us from doing
14 that. So we would have to give notice -- if we're going
15 to turn over the names of students who have nothing to
16 do with this, whose parents may have made donations,
17 they may have been designated special interest, they
18 may have been designated special interest for other
19 reasons, have nothing to do with this fraud, there's
20 nothing improper about the fact they were tagged,
21 there's nothing untoward about their donations, we
22 would have to give every one of those people notice
23 that we're about to disclose the fact that they are
24 going -- their record is going to be produced in this
25 litigation.

1 And there are a lot of people over this
2 five-year period who would be implicated by that. We
3 would have to give notices to hundreds of people. We
4 would then have to field all of their questions and
5 comments in response. That would only add to the
6 burden of already having to go and try to retrieve
7 mailboxes, restore them, search them and review the
8 resulting hits, whatever those might be. So that's a
9 massive undertaking.

10 And then when you turn to the Advancement
11 Database, there's personal protected information in
12 that database. Of course, it's the highly -- most
13 highly sensitive information, including all the
14 donations made by any donor at USC. Turning over that
15 information to have the Defendant rummage around in it
16 looking to match up donations to names would also
17 implicate privacy rights, trade secret rights, all
18 kinds of other complications. And, Your Honor, most of
19 the information in that database, that Advancement
20 Database, that reflects all the donations, totally
21 irrelevant to this matter.

22 I mean, we don't believe, obviously, that
23 information about donations in connection with people
24 tagged special interest is relevant, but most of the
25 information in that Advancement Database has nothing to

1 do with people who have been tagged special interest
2 and made donations; it reflects the hundred thousand
3 more donations made every year at USC, all of which
4 would, I mean, according to the request, have to be
5 somehow made available to the Defendant. So that adds,
6 Your Honor, to the burden.

7 THE COURT: Okay. So let me ask you, there are
8 some kind of suggestions in the materials that you have
9 offered to provide communications specifically
10 regarding Mr. Zangrillo's daughter to Defendant. And
11 here's -- I don't know how much you -- do you have much
12 more to say? Are you done?

13 MR. FUCHS: No. I'm happy to answer your
14 questions, Your Honor.

15 THE COURT: Sure. So one of the things I would
16 like to do is get the ex parte communications that you
17 spoke of.

18 And, actually, Mr. Weinberg, I'd like you to
19 file a supplemental memorandum under seal explaining,
20 as you did here today, how the materials relate to your
21 defense. And you can file it however you wish, but if
22 you want to file it ex parte and under seal, you may.

23 MR. WEINBERG: Thank you.

24 THE COURT: And whatever you can provide to USC,
25 you should, even if it's under seal. And I think we

1 could also -- if you feel strongly about it, you could
2 ask for a protective order, since it has to do with
3 your defense. I don't know what to do about that,
4 but -- I wonder if you should just issue a limited
5 subpoena at this time for the information that you can
6 negotiate they should give you.

7 And I would urge USC to consider expanding your
8 offer to additional documents that reflect any
9 communications or reviews of the application by anyone
10 outside of the Athletic Department as well.

11 You want me to say that again?

12 MR. FULLER: Yes. I was talking to him. Sorry.

13 THE COURT: That's no problem.

14 THE COURT: So I would urge you to consider
15 expanding your offer to include communications about
16 her admissions -- her admittance to the University not
17 just with people in the Athletic Department but with
18 other people who had something to do with her being
19 admitted as well.

20 MR. FUCHS: And, Your Honor, I just want to be
21 clear, of course I'll talk to Defendant Zangrillo's
22 counsel about that. I just want to make clear, we have
23 offered to produce not only communications about
24 Amber Zangrillo that we have in the Athletics
25 custodians whose documents we've restored but also in

1 the Admissions as well, and there's really no reason to
2 believe -- and I'm happy to hear from defense counsel
3 why there would be -- but no reason to believe anyone
4 else had any involvement in her admission. So that's
5 the most logical place to go, and we were willing to do
6 that.

7 THE COURT: Anyone else other than Donna Heinel?

8 MR. FUCHS: Well, we're willing to search --
9 Donna Heinel was in Athletics, and we're willing to
10 search many, many custodians within Athletics and then
11 many custodians within Admissions.

12 THE COURT: So, I mean, you can issue another
13 subpoena if you want to, or if you can just reach an
14 agreement on that and just go ahead and get him that
15 information, which I think he is entitled to if he
16 issues a subpoena for it, or you can have him issue
17 another subpoena if you require him to do that. But
18 let's reach some agreement on that and get that going
19 anyway and get that material to Mr. Weinberg.

20 It may be, Mr. Weinberg, after you review that
21 material, you don't need such wide-ranging other
22 evidence to prove up what you want to. And I don't
23 know what it's going to show, but why don't -- yes.

24 MR. WEINBERG: Could I have about two minutes
25 just to make a --

1 THE COURT: Yes.

2 MR. WEINBERG: -- short, short rebuttal? I know
3 Your Honor is --

4 THE COURT: Yes, but let me just -- you go right
5 ahead and take the podium, but let's get that done.

6 And then, also, I do think on the next round, if
7 Mr. Weinberg continues to press his request, that we
8 will need some certification that the documents that
9 don't exist don't exist, that someone looked for them
10 and didn't find them, or I think your representations
11 about the burdensomeness of things would be fine. But
12 just, also, getting up and saying it would cost
13 hundreds of thousands of dollars to do this is really
14 not sufficient if it's an otherwise reasonable request
15 but it's just going to be too burdensome for you.

16 MR. FUCHS: Yeah, Your Honor. I'm happy to
17 discuss and meet and confer and also follow your
18 instruction. I mean, I do want to say, Your Honor --
19 and I think the meet-and-confer process will be
20 productive. It's a little difficult to really know
21 what's being requested here because the requests have
22 changed and aren't clear.

23 THE COURT: Okay. Yes.

24 MR. WEINBERG: Just a couple of points, you
25 know, not a full reply, but I want to at least touch

1 base on a few things before the hearing ends.

2 One is USC counsel says, So USC can print out a
3 VIP spreadsheet, in reference to 2016 email Exhibit 3
4 where it's apparent that the Admissions Director has a
5 spreadsheet, whether it's on his computer or whether
6 it's -- USC says I don't want it. I've managed to say
7 I don't want them to do anything that looks to them
8 like something beyond producing a document.

9 Well, punching a server with certain search
10 terms is what companies do every day, they do
11 electronic searches, and if the Admissions Director, on
12 March 12, 2016, could press his computer and have a VIP
13 University-wide spreadsheet to consult when he was
14 doing his admissions decisions, the 2018 or '19 one has
15 to be available, the 2016 one is acquirable, and it's
16 not a great expense. It's something that the
17 Admissions Department has access to today --

18 THE COURT: So I'm hearing them say it is not
19 available, in fact, but --

20 MR. WEINBERG: But that's just implausible when
21 you read -- maybe the March 12 -- and Brunold is very
22 careful. He says, The database -- the VIP spreadsheet,
23 if it existed, the March 12 one, I didn't maintain it,
24 but he's not saying, I can't press my computer in my
25 Admissions Department and push "print" and have a VIP

1 spreadsheet, just like I could have had on March 12,
2 2016.

3 MR. FUCHS: Your Honor, if I could just respond
4 to that?

5 MR. WEINBERG: May I just finish a few things?

6 THE COURT: Yeah, let him finish. It's all
7 right. I'll give you a chance.

8 MR. WEINBERG: Second, this is not a conspiracy
9 about, you know, phony athletic profiles. Yes,
10 Mr. Singer, on his own, developed profiles. He had
11 access to the applications. He wrote into the
12 applications.

13 This is a conspiracy, if at all, where the goal
14 was for Singer to give USC money. For Amber Zangrillo,
15 the money was in exchange for VIP help by Singer
16 through Heinel for VIP. Mr. Zangrillo didn't pay
17 Heinel's extra money she was getting from Singer. That
18 was between her and Singer. He made a donation, and
19 that's why I need to detoxify the donation, just
20 because of the Government allegations.

21 Third is that I have an example here, which is
22 that Exhibit 4 from the original subpoena -- and, Mike,
23 can you give it to the Clerk? -- because there's one
24 category in it that would make it easy. I don't want
25 their entire data -- their Development Office database.

1 This is Exhibit 4, Your Honor, but I just -- for your
2 convenience. I don't want the database. They could
3 print out the parent of a student that would
4 demonstrate the relationship between their donor
5 database and the students and demonstrate how common it
6 is for donors to -- for parents to make donations for
7 people that are students, like Mr. Zangrillo.

8 I don't need the vast majority of Trojan
9 families that every year give money, you know, for the
10 football team. I'm not looking to invade privacy,
11 although I would say their educational privacy rules
12 don't cover, you know, donor donations; they cover
13 student files. I'm not seeking student files.

14 In terms of searches, we can start -- if the
15 Government -- I'm betting USC got for Tim Brunold what
16 they did for the United States Government, they got a
17 search warrant, or they can do it by subpoena, they can
18 do it by a Court order and simply download Brunold's
19 emails for a certain period of time, just like they did
20 for the Government.

21 And I'm not asking for all his emails, I'm not
22 asking -- I'm asking for a very subset of emails that
23 would show VIP, special interest, et cetera, and would,
24 I contend, have what I need to legitimize and normalize
25 the VIP status, its relation to promises of donations,

1 and it would allow me to integrate Mr. Zangrillo's
2 facts into the USC norm.

3 THE COURT: So what -- I'm just curious. Why
4 can't you just say that Donna -- the Donna Heinel chart
5 that you have shows that people, through their personal
6 connections and/or their donations, are tagged as VIP,
7 it goes to the Admissions Office, and those people get
8 preferential treatment? And I think that that's very
9 clear.

10 MR. WEINBERG: I can't accept -- the Government
11 is toxifying, if I can use that word, the Athletics
12 admissions process. They have called Heinel a
13 conspirator, they're claiming that --

14 THE COURT: But those other people are not
15 charged in this case.

16 MR. WEINBERG: Not charged, and it gives me part
17 of the argument. But the bigger argument would be that
18 the same spreadsheet came to Admissions and had the
19 same effect when it was generated by the Marshall
20 School of Business. Then the Government wouldn't be
21 able to say, See, Heinel corrupted the Athletics
22 Department for Mr. Singer.

23 THE COURT: So when you get these in at trial,
24 you'll do these as business records, and your witness
25 will be the keeper of the records?

1 MR. WEINBERG: Yes.

2 THE COURT: And then you'll just use the records
3 in and of themselves?

4 MR. WEINBERG: I will argue that Mr. Zangrillo,
5 looking at the world like a lot of parents, had an
6 educational expert, in this case, Mr. Singer, and that
7 he knew of the VIP program, knew of the special
8 interest program, knew the Development Office supported
9 it, knew the President supported it, and he made a
10 donation. And I will give Your Honor ex parte a
11 document that I represent is relevant to the
12 information that's consistent with what Mr. Zangrillo
13 knew.

14 THE COURT: Okay. Then should we file this?

15 MR. WEINBERG: Ex parte, please.

16 THE COURT: All right. I'll deal with that.

17 MR. WEINBERG: I will narratively lay out the
18 importance of this document and --

19 THE COURT: Well, I think you -- you may want to
20 do that in a filing.

21 MR. WEINBERG: Yes.

22 THE COURT: Would you like to do that?

23 MR. WEINBERG: Yes, Your Honor, in an ex parte
24 filing.

25 And, finally, I want to give -- we gave

1 Your Honor Exhibit 2 and the original, the VIP transfer
2 spreadsheet, which is an Admissions Department
3 spreadsheet. We've been able, in a very odd format, to
4 get some of the spreadsheet, but we don't have a real
5 spreadsheet, and what the Government's saying, Brunold
6 didn't want to know about donors and this was not
7 information he wanted and not information he kept and
8 not information he considered. We've made some red
9 lines around this Admissions Department document that I
10 would submit under seal and give the Government -- give
11 the USC a copy and ask for it to be submitted under
12 seal, consistent with my agreement with Mr. Fuller.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 Okay. Yes, sir, Mr. Fuchs.

16 MR. FUCHS: Thank you, Your Honor.

17 You know, I think Your Honor understands what's
18 going on with the spreadsheets. USC has a database.
19 It can create spreadsheets. Mr. Brunold accessed the
20 data in the database to create a spreadsheet back in
21 time. He didn't retain that spreadsheet. USC can now
22 create a spreadsheet. We have no idea what Mr. Brunold
23 's spreadsheets looked like, but what I can I assure
24 Your Honor is, because the SIS -- this system doesn't
25 contain information about donations, there was no

1 information in that spreadsheet about donations.

2 Now, what we don't want to do, Your Honor, just
3 to be clear, we don't want to print out a list by name
4 of every person who was designated special interest and
5 then turn over the actual names of people because then
6 we'd have to -- that would implicate FERPA. We'd have
7 to go through a humongous notification process, and it
8 would eject these poor people who have nothing to do
9 with this case into the case.

10 Mr. Weinberg asked for the number of -- see,
11 that's really what he's after, he wants to know the
12 following things: The number of people who were
13 designated special interest, how many of those people
14 got in and then, of those people, how many made \$50,000
15 donations in the one year before and the one year after
16 admission.

17 We can -- I'll talk with him. We might -- I
18 have not gotten permission from my client. We may be
19 able to provide anonymized data just to be done with
20 this, anonymized data concerning that percentage. The
21 problem, Your Honor, comes in then going to the
22 Advancement Database . He says he hasn't requested the
23 Advancement Database. He said in no uncertain terms a
24 way to solve for C or D would be, Just give me the
25 entire Advancement Database. That's what he said in

1 his opposition. And in E, he says, I want a copy of
2 the University Advancement Database.

3 We're not going to give him the whole University
4 Advancement Database for any number of different
5 reasons. I don't understand what he's saying he wants
6 us to do now with regard to the donation piece of this
7 exercise because having to match a special interest --
8 person tagged special interest with their family's
9 donation history is also a monumental exercise.

10 If he wants to give us -- tell us, Just look for
11 five people and their donations, maybe. I don't know.
12 I'll talk with him. But we're still at a place where
13 the burden is absolutely overwhelming based on the
14 actual written requests. Your Honor --

15 THE COURT: Okay. Can I say another thing? I
16 mean, he does have the right to subpoena someone to
17 trial, and it may be a witness from USC could testify
18 to information sufficient for what he's interested in
19 or -- I mean, I don't know. That's another thing you
20 could talk to each other about.

21 MR. WEINBERG: And I intend to talk to
22 Mr. Fuchs. The document I just handed to the Court,
23 and perhaps if we can mark, and I've given it to USC.
24 It's a demonstration of how donation information is on
25 Mr. Brunold's VIP transfer spreadsheet. I know that

1 Mr. Fuchs doesn't know that or he wouldn't have made
2 the argument that Admissions doesn't know what the
3 donations are. This is --

4 THE COURT: Okay. And this that you filed under
5 seal that begins, "Entire list" --

6 MR. WEINBERG: Yes, that was the --

7 THE COURT: -- what is this?

8 MR. WEINBERG: Well, we just handed -- and I
9 handed -- we'll deal with the one that's now marked.

10 THE COURT: I've got two.

11 MR. WEINBERG: One of them's clean, and one we
12 just, as an example, put the red box around so that you
13 can see the kind of information.

14 THE COURT: Oh, I see the red box.

15 MR. WEINBERG: And this, again, is a spreadsheet
16 that was sent by Mr. Brunold labeled "VIP Transfer."

17 THE COURT: Okay. All right. So I think we're
18 going to stop now.

19 MR. FUCHS: Your Honor, I just have one proposal
20 because Mr. Weinberg made a representation that the
21 money was exchanged for VIP status, and there's not a
22 shred of evidence -- there's not an allegation that
23 supports that, there's not a shred of evidence that
24 supports that. I think it would be helpful to hear
25 from the Government about why the VIP process has

1 nothing to do with their case, as charged.

2 MR. ROSEN: I'll be brief. I know we want to
3 get out of here.

4 Judge, Mr. Fuchs is exactly right. The VIP
5 process has absolutely nothing to do with this case
6 because he's been charged with conspiracy to commit
7 wire fraud and mail fraud, and that relies solely on
8 his intent and his good faith. He had no --
9 Mr. Zangrillo had no idea at all his daughter,
10 Amber Zangrillo, was getting tagged as a VIP applicant.

11 The only thing that he believed was that there
12 was phony crew credentials being made up and put on the
13 application, and by the way, that's on the application.
14 The very first activity is that Amber Zangrillo
15 spent 44 hours a week doing crew at the LA Rowing
16 Club, which is patently false. And then he was never
17 told at all during the case that Amber Zangrillo was
18 admitted as a VIP or anything like that or a special
19 interest.

20 I think -- and we haven't heard any evidence to
21 the contrary -- that the only time Mr. Zangrillo
22 actually learned about that was after his arrest when
23 he figured it out, and now he's trying to back-door and
24 cobble together a defense of good faith based on
25 information and emails he was not on, he had no

1 knowledge of, and there's nothing showing any
2 communications between himself, Rick Singer,
3 Donna Heinel or anyone else showing that this is how he
4 thought she was going to get in.

5 There's been a lot of time spent on the USC
6 admissions process and everything like that. There's
7 been no time spent on his state of mind. All we've
8 seen is one email or one document that's been provided
9 solely to the Court, not to the Government, despite our
10 request for Rule 16(b) discovery, that they claim he
11 was aware, aware generally of the VIP process,
12 nothing to say he was aware of it in the context of
13 Amber Zangrillo's admission.

14 The entirety of Amber Zangrillo's admission was
15 a complete fraud. There were classes that
16 Mr. Zangrillo was paying Michaela Sanford from The Key
17 Worldwide to take and then put and submit it to USC so
18 that she could go to Europe. He wanted Rick Singer to
19 fix an F.

20 Mr. Weinberg brought up about how some parents
21 were brought in kicking and screaming into this. Not
22 Mr. Zangrillo. Mr. Zangrillo encouraged, aided,
23 abetted and paid for that fraud on multiple, multiple
24 occasions. Even after he was admitted into -- even
25 after Ms. Amber Zangrillo was admitted into USC,

1 Mr. Zangrillo, in an October 25th, 2018, call admitted
2 he had no idea why the \$200,000 payment to KWF, The Key
3 Worldwide Foundation was made. He said -- he's asking
4 Rick to come up with a story for why that payment was
5 made. He says, "Rick, what was the Amber payment for,
6 just so I know we have the story straight?"

7 This isn't a guy acting in good faith about the
8 VIP program; he's getting his story straight to lie to
9 the IRS about the \$200,000 funneled through the -- for
10 the charity. They talked about the \$50,000 to USC.
11 What about the \$200,000 that he paid out to Rick
12 Singer? Where was that going? We'd have to believe
13 that USC, one of the largest research institutions
14 on the planet, set up some secret agreement with
15 Rick Singer and his fake charity to funnel donations
16 through that charity that served underserved kids in
17 order to legitimize anything good faith about
18 Zangrillo's actions.

19 It's ridiculous. This is a complete side show,
20 completely unrelated to the issues at hand, and we
21 intend fully, if any of the documents are gotten, to
22 file a motion in limine to admit.

23 The sole question is: Did Mr. Zangrillo know
24 about that? And there's been -- know about this
25 process of getting in? And there's been absolutely no

1 shred of evidence suggesting that, for Amber Zangrillo,
2 he did.

3 MR. WEINBERG: Mr. Zangrillo will demonstrate to
4 a jury that he had a good-faith basis to know of the
5 VIP program, to know the President of USC knew of the
6 VIP program. The document I provided Your Honor is one
7 of several that will support Mr. Zangrillo's good
8 faith.

9 Mr. Singer charged him money that Mr. Zangrillo
10 fully understood would go to USC, but it was paid on
11 the date or several days before the Government flipped
12 Mr. Singer. So Singer kept the money rather than
13 donating it to USC.

14 The evidence from the audiotapes will
15 demonstrate Mr. Singer, the Government's pivotal
16 witness, to be mendacious, to be extortive, to lie to
17 parents, to fill out applications like the one that
18 Mr. Rosen just read. Mr. Zangrillo or his daughter
19 didn't fill out that application.

20 Mr. Zangrillo didn't need Mr. Singer to fill out
21 an application that contained anything about rowing.
22 He had plenty of recommendations from responsible
23 credible people in the USC family, and we'll make that
24 presentation ex parte, Your Honor. She was admitted as
25 a VIP, not as a rower, and I don't think this is the

1 time, in a 17(c) subpoena between USC and myself, for
2 the Government to try to diminish the Sixth Amendment
3 right of Mr. Zangrillo.

4 THE COURT: Sure. So, Mr. Rosen, Mr. Zangrillo
5 still gets to put on his defense. I know you feel very
6 passionately about your case, but he's still entitled
7 to subpoena -- he's still entitled to compulsory
8 process to subpoena things that are relevant to his
9 defense. So you're -- and I hear you, but I think this
10 is enough for this afternoon.

11 MR. WEINBERG: Thank you, Your Honor.

12 THE COURT: So the way we're going to leave this
13 now is the parties -- USC and Mr. Zangrillo's counsel
14 will confer and see what kind of agreement you can
15 reach. If you want him to issue another subpoena,
16 that's fine, for some limited information.

17 And I'll let you file something. You can file
18 something else, if you wish. I'm not going to decide
19 the bigger motion in the next week, at least -- I'll
20 say at least for two weeks.

21 And I don't know if you want to revise your
22 subpoena. I know there have been some changes, and
23 Mr. Fuchs was right about that. You may want to redo
24 that --

25 MR. WEINBERG: Thank you.

1 THE COURT: -- after you confer and see what
2 kind of information you can agree on.

3 MR. FUCHS: And Your Honor, thank you. You
4 know, perhaps -- a slight revision in the plan perhaps.
5 I'll confer with him. If we can reach an agreement, it
6 moots the motion and maybe prevents you from doing a
7 lot of work and maybe even some additional briefing.

8 I'll talk with him about it, and maybe we can
9 inform the Court whether we're going to be able to come
10 to some agreement based on all of the changes in the --

11 THE COURT: Why don't you take ten days to
12 confer and let the Court know what your plan is. And
13 forget what I said and -- strike that, and we'll just
14 let you see what you can work out.

15 MR. WEINBERG: Thank you, Your Honor.

16 MR. FUCHS: Thank you, Your Honor.

17 THE COURT: Okay. Thank you very much.

18 THE CLERK: Court's in recess.

19 (Adjourned, 4:10 p.m.)
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C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do
hereby certify that the foregoing pages are a true and
accurate transcription of my stenographic notes in the
above-entitled case.

/s/ Debra D. Lajoie

9/23/19